

## **EXHIBIT C**

**From:** Teitelbaum, Aaron (ATR) <Aaron.Teitelbaum@usdoj.gov>  
**Sent:** Wednesday, August 23, 2023 4:30 PM  
**To:** EWALT, Andrew (AJE)  
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**Subject:** RE: Narrowing 30(b)(6) notices

Andy,

As you and I discussed yesterday evening, plaintiffs were interested in seeking a continuance of the briefing schedule at that point to allow both sides to focus additional energy on negotiations rather than briefing. Google's proposal, coming shortly before plaintiffs' filing deadline, gives that additional respite only to Google and not to plaintiffs. We look forward to continuing to negotiate with Google in the coming days, but we are not amenable to Google's offer to seek an extension from the court now, after plaintiffs have expended significant time and effort (that could have been spent negotiating) on preparing their filings.

We look forward to our continuing negotiations about the parties' respective Rule 30(b)(6) notices.

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**Subject:** [EXTERNAL] RE: Narrowing 30(b)(6) notices

Aaron,

We are disappointed and concerned that the DOJ has not responded to our numerous requests over the past week for a substantive proposal to narrow its 30(b)(6) notice. Doing so is the essential next step in making progress. We note that, in a showing of good faith, even before receiving a proposal from Plaintiffs to narrow their 30(b)(6) notice, Google proposed many accommodations to address Plaintiffs' concerns with Google's 30(b)(6) notice. We now look forward to receiving Plaintiffs' comprehensive proposal so that the parties can get to work implementing Judge Anderson's guidance towards narrowing the outstanding disputes. Please provide a date certain when we can expect that proposal.

With that said, we anticipate that the Court will find it more helpful to review briefs that address the parties' positions closer in time to next Friday's hearing (rather than briefs that reflect positions taken before Plaintiffs have made a substantive proposal), so Google would be willing to join the United States in a motion to extend the deadlines for (a) Plaintiffs to respond to Google's motion for a protective order to noon ET on Monday, August 28; and (b) Google's reply to 9 pm ET on Wednesday, August 30. If you're able to send the draft papers over, we will review them promptly.

Andy

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**Subject:** RE: Narrowing 30(b)(6) notices

Andy,

Thank you for your email. We will work to provide a written proposal to move our negotiations forward on our respective 30(b)(6) notices as soon as we are able. To facilitate these discussions, we ask that you provide a proposal in writing describing how Google intends to respond to Plaintiffs' Fifth set of Interrogatories and RFAs, which Google has suggested are duplicative of topics covered in the 30(b)(6) notice. Your written objections to these Interrogatories and RFAs do not suggest a willingness to provide substantive answers to any of these requests.

However, we are not inclined to agree to Google's terms for obtaining a deadline extension. As you know, drafting of motion responses is a multi-day process. Learning of whether we might be able to jointly move the Court for an extension at 2pm, three hours before the filing deadline, does not provide plaintiffs with any meaningful benefit.

Sincerely,

**Aaron M. Teitelbaum**

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**Subject:** [EXTERNAL] Narrowing 30(b)(6) notices

Aaron,

Google cannot agree to Plaintiffs' proposal to adjust the briefing schedule on Google's motion for a protective order to give Plaintiffs more time to file their responsive brief and to adjust the briefing schedule on Plaintiffs' motion for a protective order to give Google less time to file its responsive brief. Nevertheless, Google remains open to discussing ways to narrow the parties' 30(b)(6) notices.

As to Plaintiffs' 30(b)(6) notice, we agree with the observation in Judge Anderson's Order from earlier today that "discussion between the parties could further narrow the issues." Indeed, Google has repeatedly explained its concerns about Plaintiffs' 30(b)(6) notice in written objections, meet-and-confers, a motion for a protective order, and again in our discussions this afternoon. Google has also repeatedly asked Plaintiffs for a substantive proposal for narrowing their 30(b)(6) notice. As Plaintiffs have yet to respond substantively, Google requests that they make a comprehensive written proposal describing what information from their 30(b)(6) notice they actually need from Google, "tak[ing] into account the discovery that has been undertaken to date and issues of proportionality," as well as the requirement that topics be described with reasonable particularity. As described below, Google is prepared to make such concessions if Plaintiffs do. If Plaintiffs are able to provide such a proposal by noon ET tomorrow, Google will consider the proposal in good faith and inform Plaintiffs by 2 pm ET whether Google will join in a motion to extend the deadlines for (a) Plaintiffs to respond to Google's motion for a protective order to noon ET on Monday, August 28; and (b) Google's reply to 9 pm ET on Wednesday, August 30. To be clear, Google will join in a motion to extend the deadlines if Plaintiffs make a comprehensive, good faith proposal on their 30(b)(6) notice in writing by noon tomorrow.

As to Google's 30(b)(6) notice, as a sign of good faith and in order to continue to make progress toward resolving (or narrowing) all issues in dispute, consistent with Judge Anderson's guidance, and to accommodate the witness's schedule, Google is willing to make significant accommodations with respect to the portions of the notice related to the FAAs. *First*, Google will agree to take the CMS corporate designee's deposition on Friday, August 25, 2023, beginning at 9 am. *Second*, Google will agree to narrow (i) the relevant period to January 1, 2019 to the present; and (ii) the definitions of "You" and "Your" to encompass only the FAAs. *Third*, Google will agree to narrow the topics for the FAAs' corporate designees to the following topics: 2(b), 2(c), 2(d), 2(e), 2(f), 9, 10, 23, 26, 30, and 32. *Fourth*, Google will agree to further narrow Topics 10, 23, and 26 as outlined below.

- Topic 10: "Your proposed, attempted, and actual purchases of Display Online Advertising from any entity, including Advertising Agencies or through Advertising Agencies, including the dates, quantities, types, price quotes, actual prices, and terms and conditions of these purchases."

- Topic 23: "All receipts, invoices, purchase orders, evidencing Your purchase of Display Online Advertising, including the amounts paid by You and the entity to whom You paid those amounts."
- Topic 26: "The prices paid or shared, in each specific instance, by You for any Display Online Advertising that You contend was higher than You would have paid absent the alleged anticompetitive conduct alleged in the Complaint, the specifications of those purchases, the amounts by which You contend those prices or shares were higher, the specific injury that You allege You suffered because of the conduct alleged in the Complaint, and the basis for Your contention."

To be clear, the narrowing proposals described above would apply to all FAAs, and Google will move forward with these topics on Friday with the CMS designee. However, as to all other FAA designees, our proposal is contingent upon the parties making meaningful progress in the overall 30(b)(6) negotiations. Accordingly:

- As to time limits: While the parties negotiate in good faith over reciprocal time limits, we agree that, whatever time limits are ultimately agreed to between the parties, any time spent on the record with the CMS designee counts against that total.
- As to scheduling: Katherine Clemons's email to Martha Goodman today confirmed that 3-4 FAA corporate designees would be available on September 8. Please tell us which designees are available on September 8 so we can evaluate.
- As to the Air Force: We are also continuing to evaluate whether we can proceed with 30(b)(6) testimony of the Air Force on August 30. Given the broader state of negotiations regarding 30(b)(6) testimony, and the United States's insistence that a hearing on these issues be held on September 1, we reserve all rights not to take 30(b)(6) testimony of the Air Force on August 30.

For the avoidance of doubt, our proposal does not apply to the topics in Google's 30(b)(6) notice that do not relate to the FAAs, including those topics at issue in Plaintiffs' motions for protective orders.

Finally, it is important to note that Ms. Clemons's email omitted numerous aspects of the history of the parties' negotiations over 30(b)(6) depositions of the FAAs. Ms. Goodman will respond separately to that email to correct the record.

As this message should make clear, consistent with Judge Anderson's guidance, Google is fully prepared to negotiate with Plaintiffs to narrow the 30(b)(6) notices to cover what discovery is truly necessary. We hope that Plaintiffs will likewise heed the Court's guidance and provide a comprehensive written proposal for how to narrow their 30(b)(6) notice to Google.

Andy

**Andrew J. Ewalt**

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